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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,079	04/25/2002	Norman Bitterlich	F-7252	5552

28107 7590 10/12/2006  
JORDAN AND HAMBURG LLP  
122 EAST 42ND STREET  
SUITE 4000  
NEW YORK, NY 10168

EXAMINER

LE, LINH GIANG

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/018,079	<b>Applicant(s)</b> BITTERLICH ET AL.	
	<b>Examiner</b> Linh-Giang Le	<b>Art Unit</b> 3626	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 April 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>021003</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Notice to Applicant*

1. The communication is in response to the application filed 25 April 2002.

Claims 1-2 are pending.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Rensimer.

4. As per claim 1 Rensimer teaches a method for acquiring and evaluating data during the admission of a patient for surgery, wherein the patient data is acquired electronically, all inquiries concerning the admission of the patient being made automatically over a programmed, interactive data acquisition unit (Rensimer; Summary of the Invention), so that:

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A routine sequence of basic questions is maintained (Rensimer; Col. 5, lines 7-19),

The input is checked for compatibility and plausibility (Rensimer; Col. 5, lines 24-32),

The completeness of the information is checked in relation to risk evaluation, Optionally, additional necessary information is obtained (Rensimer; Col. 5, lines 7-19),

The absence of information with regard to the consequences for the evaluating unit is estimated (Rensimer; Col. 5, lines 7-19) and,

All admission activities are recorded (Rensimer; Col. 5, lines 7-19),.

That, at any time of the data acquisition, and the risk is evaluated from the actual state of the information, that, in the course of the data acquisition, with each risk evaluation, a list is presented of further urgently necessary entries and that unanswered questions are acknowledged as such, in order to record that the due diligence obligation during the data acquisition has been fulfilled (Rensimer; Col. 7, line 20 to Col. 8, line 23).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

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said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rensimer.

7. As per claim 2, Rensimer does not expressly teach wherein the risk is evaluated at every point in the data acquisition from the actual state of the information so that the

Each input value of the data acquisition is given a value between 0 and 1 in regard to its effect on the surgical risk, a 0 being assigned if a risk-increasing effect on the course of the surgery is not to be expected from concrete information, and the value of 1 being assigned if, on the base of experience, the dramatic surgical complications cannot be excluded for the concrete information provided,

Each input field in an input device is occupied by a standard number the risk assignment to a risk group

1=none

2=slight

3=moderate

4=serious and

5=dramatic surgical complications

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However, this is well known in the art as evidenced by Rensimer. In particular, Rensimer teaches a decision-making process including risk of complications with three different levels – “minimal,” “low,” “moderate,” and “high” (Rensimer; Col. 3, line 62-67). It would have been obvious to add this feature with the motivation of tracking the efficacy of specific treatment protocols (Rensimer; Col. 1, line 63 to Col. 2, line 20).

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh-Giang Le whose telephone number is 571-272-8207. The examiner can normally be reached on 8 AM - 5PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

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free). If you would like assistance from a USPTO Customer Service

Representative or access to the automated information system, call 800-786-

9199 (IN USA OR CANADA) or 571-272-1000.

  
LLe

*Carolyn Bleck*  
Patent Examiner 3626  
10/2/06